

Update: Traffic Benchbook— Third Edition, Volume 3

CHAPTER 3

Section 625 Offenses

3.4 OWI or OWVI Causing Death of Another — §625(4)

B. Elements

4. The defendant's operation of the motor vehicle caused the death of another person.

On page 131, change the sub-subsection heading as indicated above and replace the first paragraph and the **Note** following it with the following text:

The causation element of MCL 257.625(4) requires only that a defendant's operation of a motor vehicle—not a defendant's operation of a vehicle as affected by the defendant's state of intoxication—be a factual and proximate cause of the harm resulting from the statutory violation. *People v Schaefer*, 473 Mich 418, 446 (2005). In the consolidated cases decided in *Schaefer*, the Michigan Supreme Court overruled *People v Lardie*, 452 Mich 231 (1996), to the extent that *Lardie* concluded the statute required that a defendant's driving as affected by his or her intoxication be a substantial cause of the victim's death.* *Schaefer, supra* at 422, 433–34, 446.

The *Schaefer* Court explained:

“The plain text of §625(4) does not require that the prosecution prove the defendant's intoxicated state affected his or her operation of the motor vehicle. Indeed, §625(4) requires no causal link at all between the defendant's intoxication and the victim's death. . . .

“Quite simply, by enacting §625(4), the Legislature intended to punish ‘operating while intoxicated,’ not ‘operating in an intoxicated manner.’” *Schaefer, supra* at 422.

*Other *Lardie* holdings were not disturbed by *Schaefer*. *Schaefer, supra* at 422 n 4.

The *Schaefer* Court explained that the causation element of §625(4) must be construed “according to the actual text of the statute[:.]”

“Section 625(4) plainly requires that the victim’s death be caused by the defendant’s *operation* of the vehicle, not the defendant’s *intoxicated* operation. Thus, the manner in which the defendant’s intoxication affected his or her operation of the vehicle is unrelated to the causation element of the crime. The defendant’s status as ‘intoxicated’ is a separate element of the offense used to identify the class of persons subject to liability under §625(4).” *Schaefer*, *supra* at 433.

A prosecuting attorney must prove that a defendant’s operation of a motor vehicle was a factual cause of a victim’s death: that “but for” the defendant’s operation of the vehicle, the victim’s death would not have occurred. A prosecuting attorney must also prove that the defendant’s operation of the vehicle was a proximate cause of the victim’s death: that the victim’s death was a direct and natural result of the defendant’s operation of the vehicle. It must also be determined that no intervening cause severed the causal link between the defendant’s operation of the vehicle and the victim’s death. An intervening cause is sufficient to sever that causal link if it was not reasonably foreseeable. An act of God or a victim’s or third party’s gross negligence or intentional conduct is generally unforeseeable and thus a sufficient intervening cause; ordinary negligence is foreseeable and thus not a sufficient intervening cause. *Id.* at 435–39.

CHAPTER 3

Section 625 Offenses

3.5 OWI or OWVI Causing Serious Impairment of a Body Function — §625(5)

B. Elements

4. The defendant's operation of the motor vehicle caused another person to suffer serious impairment of a body function.

On page 137, change the sub-subsection heading as indicated above and replace the first paragraph and the **Note** following it with the following text:

The causation element of MCL 257.625(4) requires only that a defendant's operation of a motor vehicle—not a defendant's operation of a vehicle as affected by the defendant's state of intoxication—be a factual and proximate cause of the harm resulting from the statutory violation. *People v Schaefer*, 473 Mich 418, 446 (2005). In the consolidated cases decided in *Schaefer*, the Michigan Supreme Court overruled *People v Lardie*, 452 Mich 231 (1996), to the extent that *Lardie* concluded the statute required that a defendant's driving as affected by his or her intoxication be a substantial cause of the victim's death.* *Schaefer*, *supra* at 422, 433–34, 446.

*Other *Lardie* holdings were not disturbed by *Schaefer*. *Schaefer*, *supra* at 422 n 4.

The *Schaefer* Court explained:

“The plain text of §625(4) does not require that the prosecution prove the defendant's intoxicated state affected his or her operation of the motor vehicle. Indeed, §625(4) requires no causal link at all between the defendant's intoxication and the victim's death. . . .

“Quite simply, by enacting §625(4), the Legislature intended to punish ‘operating while intoxicated,’ not ‘operating in an intoxicated manner.’” *Schaefer*, *supra* at 422.

The *Schaefer* Court explained that the causation element of §625(4) must be construed “according to the actual text of the statute[:.]”

“Section 625(4) plainly requires that the victim's death be caused by the defendant's *operation* of the vehicle, not the defendant's *intoxicated* operation. Thus, the manner in which the defendant's intoxication affected his or her operation of the vehicle is unrelated to the causation element of the crime. The defendant's status as ‘intoxicated’ is a separate element of the offense used to identify the class of persons subject to liability under §625(4).” *Schaefer*, *supra* at 433.

A prosecuting attorney must prove that a defendant's operation of a motor vehicle was a factual cause of a victim's death: that "but for" the defendant's operation of the vehicle, the victim's death would not have occurred. A prosecuting attorney must also prove that the defendant's operation of the vehicle was a proximate cause of the victim's death: that the victim's death was a direct and natural result of the defendant's operation of the vehicle. It must also be determined that no intervening cause severed the causal link between the defendant's operation of the vehicle and the victim's death. An intervening cause is sufficient to sever that causal link if it was not reasonably foreseeable. An act of God or a victim's or third party's gross negligence or intentional conduct is generally unforeseeable and thus a sufficient intervening cause; ordinary negligence is foreseeable and thus not a sufficient intervening cause. *Id.* at 435–39.

CHAPTER 3

Section 625 Offenses

3.8 Operating With the Presence of Drugs — §625(8)

B. Elements

2. At the time the defendant operated the vehicle, “any amount of a controlled substance” was present in the defendant’s body.

Insert the following text after the paragraph at the top of page 148:

Carboxy THC,* a metabolite of THC (the psychoactive ingredient of marijuana), is not a schedule 1 controlled substance; however, the presence of carboxy THC in a person’s blood is conclusive evidence of THC’s presence in that person’s body. Because marijuana is a schedule 1 controlled substance (MCL 333.7212(1)(c)) and because the presence of carboxy THC proves the presence of THC in a person’s body, the presence of carboxy THC in a person’s blood may establish that the individual violated MCL 257.625(8). *People v Derror (On Reconsideration)*, ___ Mich App ___, ___ (2005).

*Tetrahydro-cannabinol.

In determining whether the trial court properly concluded that carboxy THC is not a schedule 1 controlled substance, the *Derror* Court first looked at the plain language of the relevant statutes. The Court noted that carboxy THC was not a “synthetic equivalent” of THC and that it clearly was “not a part of the actual plant” for purposes of the definition of marijuana found in MCL 333.7212(1)(d). The Court held that the trial court correctly found that carboxy THC was not a schedule 1 drug and further explained this conclusion in light of the standard rules of statutory construction:

“We note that the Legislature could have included metabolites in the definition of marijuana or schedule 1 controlled substances if it so intended. Under the probate code, for example, certain parties are required to report if ‘a newborn infant has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in his or her body.’ ‘[T]he Legislature is presumed to be aware of all existing statutes when enacting new laws.’ As the Legislature expressly included metabolites in another statute, we must assume that it intended to expressly *exclude* the regulation of these substances in the public health code.” *Derror, supra* at ___ (footnotes omitted).

Although carboxy THC is not a schedule 1 drug and could not, alone, satisfy the requirement in MCL 257.625(8) that a person operated a vehicle with the presence of any amount of a controlled substance in his or her body, “the presence of carboxy THC in a person’s blood *conclusively* establishes the prior ingestion of THC.” *Derror, supra* at ___.

CHAPTER 4

Section 904 Offenses

4.2 Driving While License Suspended or Revoked Causing Death—§904(4)

A. Elements of the Offense

3. By operation of the motor vehicle, the defendant caused the death of another person.

On page 160, replace the text in this sub-subsection with the following:

Based on the outcome in *People v Schaefer*, 473 Mich 418, 446 (2005), the Michigan Supreme Court reversed the Court of Appeals' decision in *People v Schut* (*Schut I*), 265 Mich App 446 (2005), because *Schaefer* overruled the part of *People v Lardie** on which the Court of Appeals relied in deciding *Schut*. *People v Schut* (*Schut II*), ___ Mich ___ (2005). In *Schut II*, the Court remanded the case to the District Court for reconsideration in light of *Schaefer*.

The *Schaefer* Court determined that the causation element of MCL 257.625(4) requires only that a defendant's operation of a motor vehicle—not a defendant's operation of a vehicle as affected by the defendant's state of intoxication—be a factual and proximate cause of the harm resulting from the statutory violation. *Schaefer, supra* at 446. The *Schaefer* Court explained that the causation element of §625(4) must be construed “according to the actual text of the statute[:.]”

“Section 625(4) plainly requires that the victim's death be caused by the defendant's *operation* of the vehicle, not the defendant's *intoxicated* operation. Thus, the manner in which the defendant's intoxication affected his or her operation of the vehicle is unrelated to the causation element of the crime. The defendant's status as ‘intoxicated’ is a separate element of the offense used to identify the class of persons subject to liability under §625(4).” *Schaefer, supra* at 433.

*452 Mich 231 (1996). *Schaefer* overruled *Lardie* to the extent that *Lardie* ruled that a defendant's driving—as affected by the defendant's intoxication—must be a substantial cause of the harm resulting from the statutory violation. *Schaefer, supra* at 422 n 4.

This reasoning as applied to the facts in *People v Large* (a companion case decided in *Schaefer*) necessitated the Court's reversal in *Schut I*. The facts in *Schut* are similar to the facts in *Large*. In *Large*, the victim rode down a partially obstructed hill onto a busy road on a bicycle without brakes. In *Schut*, the victim drove a snowmobile into the path of the defendant's truck. Under *Schaefer*'s rule, whether a defendant is liable for the harm caused by a collision that occurs during the defendant's operation of a motor vehicle while intoxicated (*Large*), or when the defendant's license has been suspended or revoked (*Schut*), requires an analysis of both factual and proximate cause.* *Schaefer, supra* at 435–39.

*See this month's update to Volume 3, Section 3.4, above.